

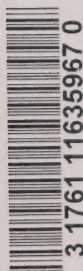


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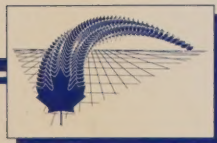


# *The Shipping Conferences Exemption Act, 1987*

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*A Staff Report to the  
National Transportation Act  
Review Commission*

*May 1992*



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## THE SHIPPING CONFERENCES EXEMPTION ACT, 1987

### EXECUTIVE SUMMARY

Section 266 of the *National Transportation Act, 1987* requires a review of the operation of the *Shipping Conferences Exemption Act, 1987 (SCEA)*, an Act administered by the Agency.

*SCEA* provisions govern the conditions under which conferences of ocean shipping lines and their collective activities are regulated in Canada. The Act exempts certain practices (e.g. collective rate-setting and conditions of service) from provisions of the *Competition Act*. To encourage competition, *SCEA* contains new provisions for confidential service contracts, the right of conference members to take independent rate action and new complaint procedures.

There has been limited use of these new provisions. Competition in the liner shipping industry has been strong, at least partly because of competition from non-conference shipping lines. Rates remain depressed due to overcapacity in the ocean shipping industry.

Liner services must be viewed in a global context. To assure the competitiveness of Canadian shippers in world and North American markets, they must have access to liner services at affordable costs. This encourages Canadian liner shipping policy to be consistent with that of Canada's major trading partners, and encourages liner services to work closely with other modes in developing competitive routings and services.





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## INTRODUCTION

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Section 266 of the *National Transportation Act, 1987 (NTA, 1987)* requires a review of the operation of the *Shipping Conferences Exemption Act, 1987 (SCEA)* as part of the comprehensive review of the *NTA, 1987*. Whether *SCEA* should continue, or whether particular exemptions or conditions in the Act should be changed, are questions the Review Panel must consider.

This analysis by Agency staff presents information intended to assist in that review and consideration.

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## BACKGROUND

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Liner companies offer regularly scheduled ocean transportation services, as opposed to irregular "tramp" or non-liner services. Liners primarily carry containerized merchandise, rather than bulk goods. Conferences are associations of liner companies operating on common trade routes who collectively agree on rates and terms of service. *SCEA* provisions govern the conditions under which conferences and their collective activities are regulated in Canada.

*SCEA* replaced the former *Shipping Conferences Exemption Act, 1979*. This Act exempted certain anti-competitive practices (e.g. collective rate-setting and conditions of service) of shipping conferences serving Canada from the provisions of Canada's anti-trust legislation - the *Competition Act*. The new *SCEA* retained this exemption while introducing measures to encourage greater competition between ocean carriers for shipper business. Some of the key provisions of *SCEA* include:

- Service contracts between a shipper and one or more conference members are permitted. These contracts are filed with the Agency and are kept confidential.
- Conference members have the right to independent action - where other members are notified. Independent action allows a conference member to offer a rate or service different from the conference's established tariff.

- Conference members can jointly fix and quote multimodal rates. Members are prohibited from negotiating as a group with inland carriers.
- Conferences are prohibited from requiring shippers to commit all of their freight under the terms of "loyalty contracts".

In addition, the Act introduced new procedures for complaints to the Agency where conference agreements or practices are felt to cause unreasonable reductions in service or unreasonable increases in rates.

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## **INDUSTRY STRUCTURE AND SERVICES**

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In terms of volume, Canadian maritime trade is dominated by bulk, low value-added movements by non-liner services. Movements in liner services account for only 7 percent or 17 million tonnes of total Canadian tonnages moved in 1990. This tonnage is primarily higher value-added traffic and often containerized. Tonnages moved by conference lines comprise about 41 percent of total liner tonnages. Therefore, approximately 3 percent of total Canadian cargoes in 1990 were moved by shipping lines subject to the provisions of *SCEA*.

Appendix 6.1 shows that the volume of freight carried by the conference liner trade, relative to non-conference services, has declined since 1988. Further, as shown in Appendix 6.2, the number of conferences serving Canada has declined for a number of years - from 34 in 1987 to 24 in 1991. This decline has been most pronounced in eastern Canada where the number of conferences has declined from 21 in 1987 to 13 in 1991. Despite this decline, conference services maintain a presence on all of Canada's major trade routes, as do non-conference lines. Appendix 6.3 provides a current list of agreements filed with the Agency.

A total of 54 shipping lines were members of conferences in 1990; of these 24 lines are members of more than one conference. Appendix 6.4 shows annual fluctuations in the number of conference liner services to and from western Canada, and an absolute decline since 1987. In contrast, the number of conference services to and from the east coast is about the same today as it was in 1987.



Notably, non-conference services maintain a strong presence on each coast. On the east coast the number of non-conference services exceed conference services. On the west coast the number of non-conference lines has increased while the number of conference lines has declined slightly.

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## **ACTIVITY UNDER SCEA**

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There has been limited use of the Act's major pro-competitive provisions - confidential service contracts and independent actions by conference member lines in setting rates or conditions of service.

Despite an increase, from 6 in 1988 to 18 in 1991, in the number of service contracts filed with the Agency (Appendix 6.5), this provision has not been widely used. According to Agency surveys of shipping conferences, only a small proportion of Canadian conference trade has moved under service contracts.

The use of independent action was more extensive particularly on transpacific routes. Its use has been limited in scope on other routes. Member lines of thirteen conferences filed independent actions with the Agency in 1990.

To a large extent, it would appear that the use of these provisions by shippers has not been necessary due to the level of competition which exists in the liner service industry. The level of competition has allowed rates to remain stable or decrease marginally. A recent study of shipping conference tariffs shows that rates for a number of major commodities are currently below 1983 levels, although rates do vary between trade routes. From a shipper's perspective, service levels have also improved since 1988. The level of competition has been influenced by several market forces which include:

- The availability and competitiveness of non-conference services.
- Depressed ocean freight rates due to persistent overcapacity on many Canadian liner trade routes.

- The dominant influence of global competitiveness which has forced conferences to agree to requests for rate concessions, negating the need for service contracts.

The Agency has received only one formal complaint since the Act's introduction. The Canadian Shippers Council (CSC), the only designated shipper under *SCEA*, has indicated its view that the current complaint resolution mechanisms in the Act are ineffective. This may account for the lack of formal complaints filed with the Agency.

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## **SHIPPER AND INDUSTRY CONCERNS**

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Two initiatives directly related to *SCEA* were undertaken in 1991. The first was organized by, among others, the CSC. It consisted of five meetings held across the country to inform shippers and freight forwarders about issues affecting the competitiveness of the Canadian transportation system and Canadian ports and to ask people for their views on these issues. While the CSC has not made its findings public, it has in the past expressed the following concerns related to *SCEA*.

- Disappointment with the extent of the use of service contracts and independent action.
- The ineffectiveness of complaint mechanisms under *SCEA*.
- The basic premise of *SCEA* - that of exemption from certain conditions of the *Competition Act* - is seen as anti-competitive.

The second event was held by the Industry Advisory Group on *SCEA* (IAG), a cross-section of interests including conference representatives, carriers, shippers, freight forwarders, other modal carriers and Canada Ports Corporation. In its four public hearings, the IAG Panel tried to find out how much consensus on *SCEA* there was and whether the exemptions from the *Competition Act* should be discontinued. Other matters discussed included:



- The scope for exemption of discussion agreements and agreements between conference and non-conference carriers.
- Service contracts and surcharge calculations.
- The potential for negotiation between conferences and inland carriers.

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## EMERGING ISSUES

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Liner services in international shipping are constantly evolving and must now be viewed in a global or at the very least in a continental context, largely beyond Canadian control. Conference and non-conference operators continue their quest for more economical means of providing service in what has become a highly integrated intermodal transportation network serving international markets.

Ocean carriers continue to take a number of measures to rationalize their services, reduce overcapacity and provide service options, with the goal of improving their financial performance. While results will vary from trade route to trade route, despite renewed growth in the demand for container services, forecasts suggest that overcapacity will continue to exist throughout the first half of the decade. Accordingly, this will have a dampening impact on rates.

Canada is a small part of a much larger North American market now being targeted by conferences operating in Canadian and U. S. markets. To assure the competitiveness of Canadian shippers in world and North American markets, they must have access to liner services at an affordable cost. In the past, Canadian liner shipping policy has sought to address this need in a manner generally consistent with that of Canada's major trading partners. Policies governing shipping conference operations both in Canada and the U.S. are now generally uniform because the corresponding statutes (*SCEA* and the *U.S. Shipping Act of 1984*) are generally uniform. The U.S. government has been reviewing its maritime policy and it is not yet clear what changes, if any, will be made to its current legislation.

The Canadian port system has a strong interest in the continued use of Canadian gateways by liner services, both conference and non-conference, serving North America. As liner services continue to rationalize their services, ports of call decisions are being based ,among other factors, on the cost and effectiveness of the total inland transportation component, including port



and terminal operations. Canadian ports have begun to work closely with the railways and others to develop "seamless" cost-competitive routings through their gateways. Factors such as the increased use of Electronic Data Interchange (EDI), improved terminal productivity and cooperative partnerships with Canadian railways are important to the success of these efforts.

Each of these issues affects the environment within which the Review Commission must examine the continuing need for the *Shipping Conferences Exemption Act, 1987*.

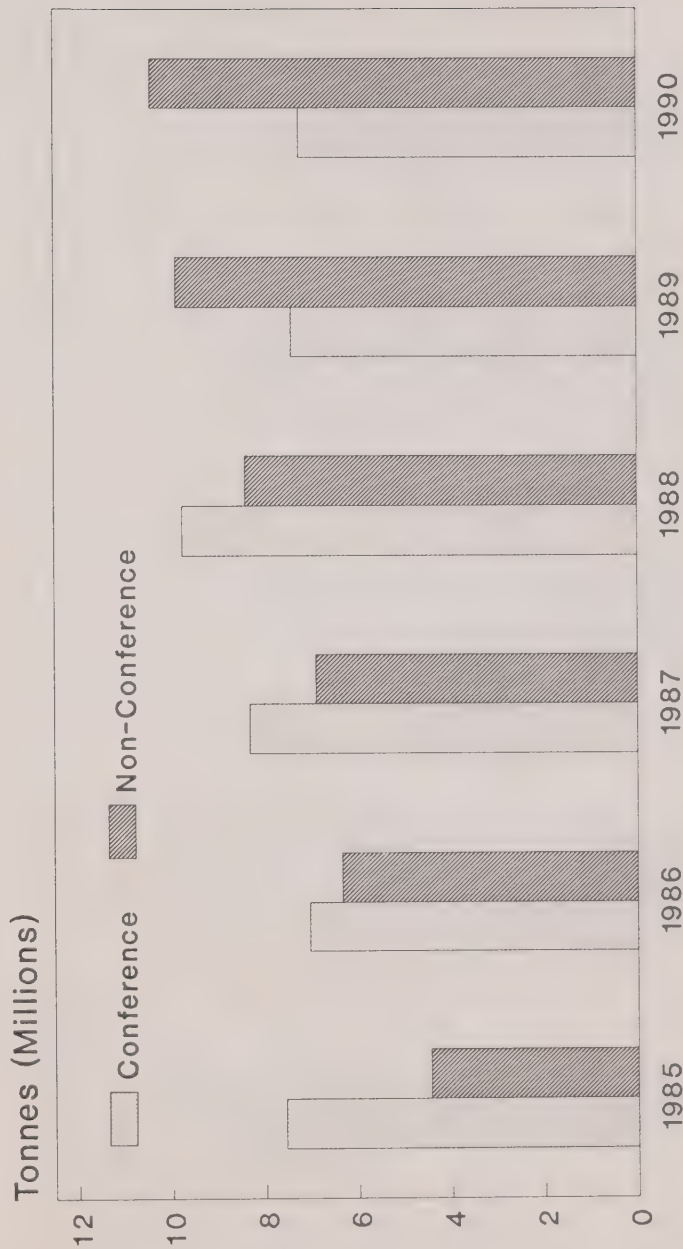
# Canadian International Liner Cargo through Canadian and U.S. Ports

Year	Tonnes	
	Conference	Non-Conference
1985	7,564,579	4,451,795
1986	7,041,801	6,339,725
1987	8,320,014	6,903,016
1988	9,758,846	8,415,748
1989	7,421,453	9,888,445
1990	7,240,318	10,423,860

Note: Tonnages in 1989 and 1990 include Canadian transshipments through U.S. ports.

Comprehensive Review Staff Working Group  
National Transportation Agency of Canada  
Source: Agency statistics

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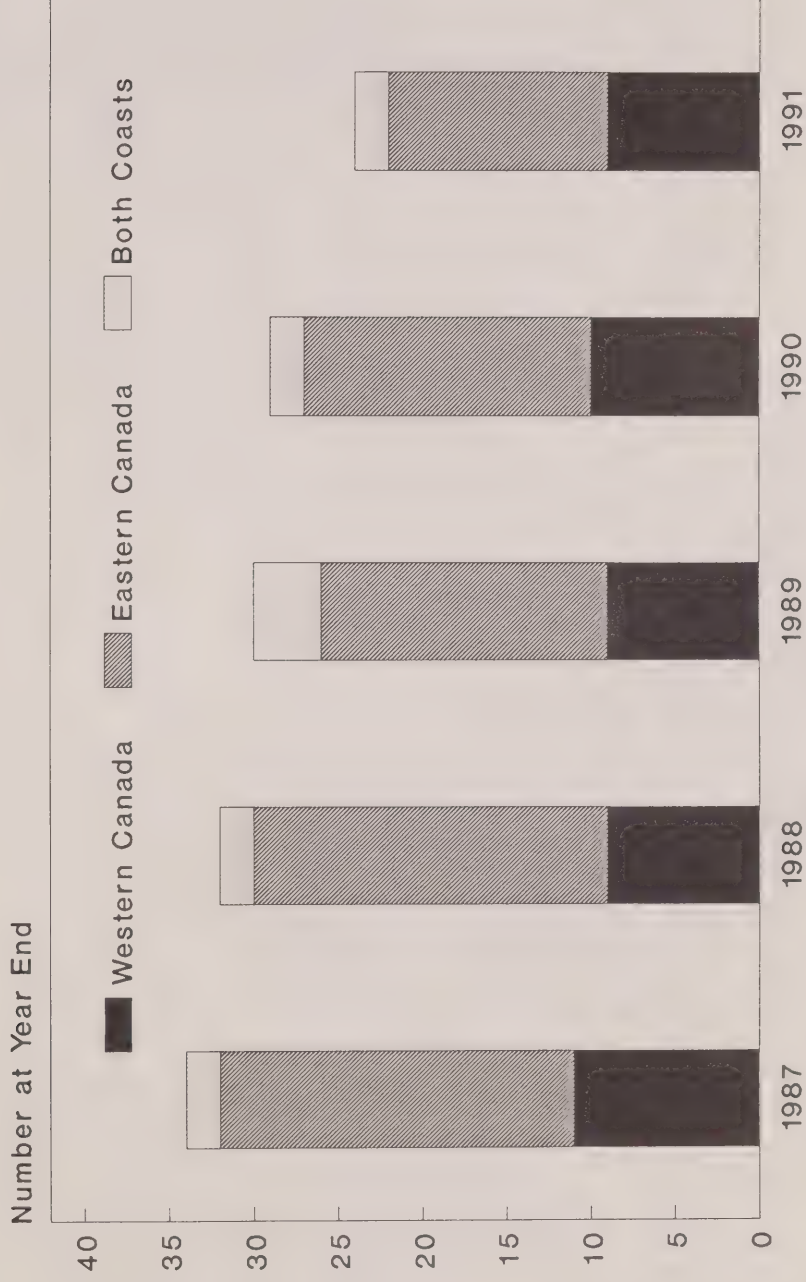
Comprehensive Review Staff Working Group  
National Transportation Agency of Canada  
Source: Agency statistics



# Number of Conferences Serving Canada

Year	Number at Year End			Total
	Western Canada	Eastern Canada	Both Coasts	
1987	11	21	2	34
1988	9	21	2	32
1989	9	17	4	30
1990	10	17	2	29
1991	9	13	2	24

# Number of Conferences Serving Canada



# Agreements Filed under SCEA, 1987 as of March 20, 1992

Agreement	Coast	Direction
<p><b>Transpacific</b></p> <p><u>Tariff Filing Conferences by Trade Route</u></p> <p>Asia North America Eastbound Rate Agreement (ANERA)  Canada Westbound Rate Agreement (CWRA)  Japan–East Canada Freight Conference (JEC)  Japan–West Canada Freight Conference (JWC)</p>	<p>Both  Both  East  West</p>	<p>Inbound  Outbound  Inbound  Inbound</p>
<p><b>United Kingdom/Continental Europe</b></p> <p>Canada United Kingdom Freight Conference  Canadian Continental Freight Conference  Canadian North Atlantic Westbound Freight Conference  Continental Canadian Westbound Freight Conference  North Europe–Canada Pacific Freight Conference  Western Canada–Europe Conference (WCEC)  Canada West Mediterranean Discussion Agreement  Mediterranean North Pacific Coast Freight Conference (MEDPAC)</p>	<p>East  East  East  East  West  West  East  West</p>	<p>Outbound  Outbound  Inbound  Inbound  Inbound  Outbound  Outbound  Both</p>
<p><b>Australia/New Zealand</b></p> <p>Australia/Eastern Canada Shipping Conference  Australia/Pacific Coast Rate Agreement  Canada/Australia–New Zealand Association of Carriers (CANZAC)  New Zealand/Pacific Coast North American Shipping Lines (NZPCNA)  Pacific Coast/Australia–New Zealand Tariff Bureau (PCANATB)</p>	<p>East  West  East  West  West</p>	<p>Inbound  Inbound  Outbound  Inbound  Outbound</p>

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Agreement	Coast	Direction
<b>Middle East/Africa</b>		
American West African Freight Conference	East	Both
The "8900" Rate Agreement	East	Outbound
West Coast/Middle East-Canada Rate Agreement	West	Outbound
<b>Central/South America</b>		
Eastern Canada/Caribbean Rate Association	East	Outbound
Eastern Canada/South American Rate Agreement	East	Both
Inter-American Freight Conference (Sections A-D)	East	Both
Inter-American Freight Conference Pacific (Sections A-D)	West	Both
<u><b>Other Agreements</b></u>		
Australia Canada Discussion Agreement	East	Inbound
Canada European Eastbound Mail Committee	East	Outbound
Canada/Caribbean Shipowners Association	East	Outbound
Canada/Australasia Inter-Association Agreement	Both	Outbound
Caribbean Bridging Agreement	East	Both
Canada Transpacific Stabilization Agreement (TSA)	Both	Inbound
Canmar/Jadroplov Agreement	East	Both
East Canada/Caribbean Discussion Agreement	East	Outbound
Eastern Canada Mediterranean Discussion Agreement	East	Outbound
Italian Line & Yugoslav Great Lakes Line Agreement	East	Outbound
Mitsui-OSK Lines/K-line Space Chartering Agreement	East	Inbound
Neptune, Nippon Liner, & Nippon Yusen Space Charter & Sailing Agreement	West	Both
Nippon Yusen Kaisha & Hyundai Merchant Marine Co. Ltd. Space Charter Agreement	West	Both
Uniline/Great Lakes TransCaribbean Agreement	East	Outbound

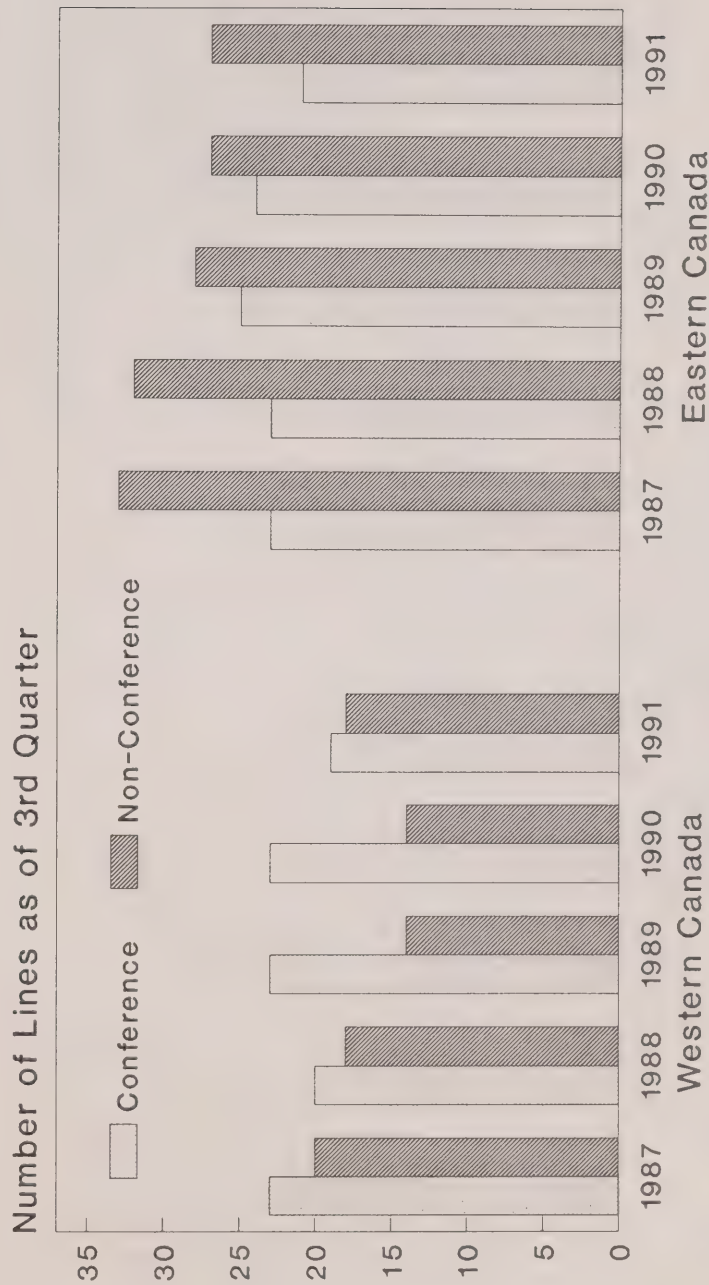
# Liner Services<sup>1</sup> on Major Eastern and Western Canadian Trade Routes

Quarter / Year	Western Canada		Eastern Canada	
	Conference	Non-Conference	Conference	Non-Conference
3 / 1987	23	20	23	33
1 / 1988	23	21	22	32
3 / 1988	20	18	23	32
1 / 1989	22	15	23	29
3 / 1989	23	14	25	28
1 / 1990	22	15	26	29
3 / 1990	23	14	24	27
1 / 1991	19	20	22	32
3 / 1991	19	18	21	27

Note: <sup>1</sup> Includes services via U.S. ports and mini-landbridge services.

Comprehensive Review Staff Working Group  
National Transportation Agency of Canada  
Source: Agency statistics

# Liner Services<sup>1</sup> on Major Eastern and Western Canadian Trade Routes



Note: <sup>1</sup>Includes services via U.S. ports and mini-landbridge services.

Comprehensive Review Staff Working Group  
National Transportation Agency of Canada  
Source: Agency statistics



# Number of Service Contracts Filed under SCEA, 1987

Year	Filed During Year	Filed Last Year and Still Effective
1988	6	-
1989	5	2
1990	24	5
1991	18	12

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